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CATHY A. CATTERSON
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARMEN GRIGSBY, Plaintiff-Appellant, v. JO ANNE B. BARNHART, Commissioner of Social Security, Defendant-Appellant.	No. 02-35415 D.C. No. CV-00-05561-FDB MEMORANDUM[*]

Appeal from the United States District Court
for the Western District of Washington
Franklin D. Burgess, District Judge, Presiding

Submitted July 11, 2003[**]
Seattle, Washington

[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9TH CIR. R. 36-3.

[**] The panel unanimously finds this case suitable for decision without oral argument. See FED. R. APP. P. 34(a)(2).

Before: REAVLEY,*** TASHIMA, and PAEZ, Circuit Judges.

Carmen Grigsby appeals the district court judgment affirming the denial of her application for SSI disability benefits. We affirm.

We review the district court's decision de novo. See Morgan v. Comm'r of Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999). The Commissioner's decision "will be overturned only if it is not supported by substantial evidence or is based on legal error." Id. (internal quotation marks omitted). We find no legal error in the decision below and find that the decision is supported by substantial evidence.

Grigsby complains that the administrative law judge (ALJ) erred in relying on the medical-vocational guidelines or "grids" because of her non-exertional impairments such as fatigue and susceptibility to infection. We cannot say that the ALJ legally or factually erred in this regard. We have held that significant non-exertional impairments may make reliance on the grids inappropriate, but that the ALJ may rely on the grids rather than a vocational expert if the grids "completely and accurately represent a claimant's limitations." Tackett v. Apfel, 180 F.3d 1094, 1101 (9th Cir. 1999) (emphasis in original). The ALJ considered

*** The Honorable Thomas M. Reavley, Senior United States Circuit Judge for the Fifth Circuit, sitting by designation.

Grigsby's evidence and concluded that her non-exertional impairments or alleged impairments did not interfere with her ability to perform the full range of medium work. This finding is supported by substantial evidence.

Insofar as Grigsby complains that the ALJ erred in failing to give due weight to the testimony or her treating physician or her own testimony regarding her physical condition, we agree with the analysis offered below by the magistrate judge. "The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and for resolving ambiguities." Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995).

Grigsby argues that the case should be remanded to the ALJ to consider medical testimony as to whether, under the third step of the five-step procedure for determining disability, her blood disorder was as severe as a listed impairment, thus compelling a finding of disability. Specifically, she argues that medical testimony is required to determine whether her neutropenia met Listing 7.15, which requires "[a]bsolute neutrophil counts repeatedly below 1,000 cells/cubic millimeter," and "[d]ocumented recurrent systemic bacterial infections occurring at least 3 times during the 5 months prior to adjudication." 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 7.15 (2003).

As to the second requirement, Grigsby relies on records supplied by Dr.

Lechner, who stated in a February 25, 1999 note: "Over recent months, however, she has been having repeated infections, including skin infections, bronchitis, etc." This note, however, indicates that the repeated infections were a new development, in that in the past infections "were not very frequent," and Dr. Lechner had earlier stated that Grigsby's neutropenia was asymptomatic. Dr. Thompson had previously noted that Grigsby "retains [a] largely functional immune system." Dr. Lechner also stated in a January 20, 2000 note that Grigsby "remains disabled from any gainful employment due to chronic and repeated infections." The February 25, 1999 and January 20, 2000 Lechner notes were generated and submitted after the ALJ ruled, but the appeals council made them a part of the record and considered them.

Assuming that Grigsby has shown good cause for submitting the Lechner notes after the ALJ ruled, see Mayes v. Massanari, 262 F.3d 963, 970 (9th Cir. 2001), we cannot say under the substantial evidence standard that a finding of disability was compelled, nor do we find the evidence sufficiently material to compel a remand to the ALJ. See id. The Lechner notes refer to a period extending beyond the relevant disability period, which ended on February 5, 1999,

the date the ALJ ruled. See 20 C.F.R. § 416.330 (2003).[1]

AFFIRMED.

[1] Our disposition is not intended to preclude Grigsby from filing a new application, for a new period, based on this new evidence.